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6 UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

7 GARRETT STEVEN HAMLIN,

8 Plaintiff,

9 vs.

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11 NANCY A. BERRYHILL,
Acting Commissioner of Social
12 Security,

13 Defendant.

} No. 2:15-CV-0331-LRS

} **ORDER GRANTING**
} **DEFENDANT'S MOTION**
} **FOR SUMMARY JUDGMENT,**
} ***INTER ALIA***

14
15 **BEFORE THE COURT** are the Plaintiff's Motion For Summary Judgment
16 (ECF No. 13) and the Defendant's Motion For Summary Judgment (ECF No. 14).

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18 **JURISDICTION**

19 Garrett Steven Hamlin, Plaintiff, applied for Title XVI Supplemental Security
20 Income benefits (SSI) on January 13, 2012. The application was denied initially and
21 on reconsideration. Plaintiff timely requested a hearing which was held on April 16,
22 2014 before Administrative Law Judge (ALJ) Lori L. Freund. Plaintiff testified at the
23 hearing, as did Vocational Expert (VE) Daniel McKinney. On September 22, 2014,
24 the ALJ issued a decision finding the Plaintiff not disabled. The Appeals Council
25 denied a request for review of the ALJ's decision, making that decision the
26 Commissioner's final decision subject to judicial review. The Commissioner's final
27 decision is appealable to district court pursuant to 42 U.S.C. §405(g) and §1383(c)(3).

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ORDER GRANTING DEFENDANT'S
MOTION FOR SUMMARY JUDGMENT- 1

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1 A decision supported by substantial evidence will still be set aside if the proper
2 legal standards were not applied in weighing the evidence and making the decision.
3 *Browner v. Secretary of Health and Human Services*, 839 F.2d 432, 433 (9th Cir.
4 1987).

6 **ISSUE**

7 Plaintiff argues the ALJ erred in finding he did not have a “severe” depression
8 impairment and in discounting Plaintiff’s credibility.

10 **DISCUSSION**

11 **SEQUENTIAL EVALUATION PROCESS**

12 The Social Security Act defines "disability" as the "inability to engage in any
13 substantial gainful activity by reason of any medically determinable physical or
14 mental impairment which can be expected to result in death or which has lasted or can
15 be expected to last for a continuous period of not less than twelve months." 42
16 U.S.C. § 1382c(a)(3)(A). The Act also provides that a claimant shall be determined
17 to be under a disability only if his impairments are of such severity that the claimant
18 is not only unable to do his previous work but cannot, considering his age, education
19 and work experiences, engage in any other substantial gainful work which exists in
20 the national economy. *Id.*

21 The Commissioner has established a five-step sequential evaluation process for
22 determining whether a person is disabled. 20 C.F.R. § 416.920; *Bowen v. Yuckert*,
23 482 U.S. 137, 140-42, 107 S.Ct. 2287 (1987). Step one determines if he is engaged
24 in substantial gainful activities. If he is, benefits are denied. 20 C.F.R. §
25 416.920(a)(4)(i). If he is not, the decision-maker proceeds to step two, which
26 determines whether the claimant has a medically severe impairment or combination
27 of impairments. 20 C.F.R. § 416.920(a)(4)(ii). If the claimant does not have a severe

28 **ORDER GRANTING DEFENDANT’S**

MOTION FOR SUMMARY JUDGMENT- 3

1 impairment or combination of impairments, the disability claim is denied. If the
2 impairment is severe, the evaluation proceeds to the third step, which compares the
3 claimant's impairment with a number of listed impairments acknowledged by the
4 Commissioner to be so severe as to preclude substantial gainful activity. 20 C.F.R.
5 § 416.920(a)(4)(iii); 20 C.F.R. § 404 Subpart P, App. 1. If the impairment meets or
6 equals one of the listed impairments, the claimant is conclusively presumed to be
7 disabled. If the impairment is not one conclusively presumed to be disabling, the
8 evaluation proceeds to the fourth step which determines whether the impairment
9 prevents the claimant from performing work he has performed in the past. If the
10 claimant is able to perform his previous work, he is not disabled. 20 C.F.R. §
11 416.920(a)(4)(iv). If the claimant cannot perform this work, the fifth and final step
12 in the process determines whether he is able to perform other work in the national
13 economy in view of his age, education and work experience. 20 C.F.R. §
14 416.920(a)(4)(v).

15 The initial burden of proof rests upon the claimant to establish a prima facie
16 case of entitlement to disability benefits. *Rhinehart v. Finch*, 438 F.2d 920, 921 (9th
17 Cir. 1971). The initial burden is met once a claimant establishes that a physical or
18 mental impairment prevents him from engaging in his previous occupation. The
19 burden then shifts to the Commissioner to show (1) that the claimant can perform
20 other substantial gainful activity and (2) that a "significant number of jobs exist in the
21 national economy" which claimant can perform. *Kail v. Heckler*, 722 F.2d 1496,
22 1498 (9th Cir. 1984).

23 24 **ALJ'S FINDINGS**

25 The ALJ found the following: 1) Plaintiff has "severe" medical impairments,
26 those being: diabetes mellitus; cognitive disorder; history of myocardial infarction;
27 and history of pulmonary embolism; 2) Plaintiff's impairments do not meet or equal
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ORDER GRANTING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT- 4

1 any of the impairments listed in 20 C.F.R. § 404 Subpart P, App. 1; 3) Plaintiff has
2 the residual functional capacity (RFC) to perform less than the full range of light
3 work as defined in 20 C.F.R. § 416.967(b): he can lift and carry 20 pounds
4 occasionally and 10 pounds frequently; stand or walk six hours in an eight hour
5 workday and sit two hours at a time for a total of six hours in an eight hour workday;
6 frequently climb ramps and stairs, balance, stoop, kneel, crouch crawl, and
7 occasionally climb ladders, ropes and scaffolds; can reach overhead bilaterally
8 frequently and handle or finger frequently; should avoid concentrated exposure to
9 hazardous machines, unprotected heights and operational control of moving
10 machinery other than an automobile; should avoid exposure to extreme heat, wetness
11 and humidity; can understand, remember and carry out simple, routine and repetitive
12 instructions and tasks; can interact superficially with the general public and co-
13 workers, but no tandem tasks; would work best in a low stress environment with only
14 occasional decision-making and occasional changes in work settings; and should
15 avoid any pace work or production work; and 4) Plaintiff's RFC allows him to
16 perform other jobs existing in significant numbers in the national economy as
17 identified by the VE, including weld inspector, hand packager inspector, and garment
18 sorter. Accordingly, the ALJ concluded the Plaintiff has not been disabled at any
19 time since January 13, 2012.

20 21 **SEVERE MENTAL IMPAIRMENTS**

22 A "severe" impairment is one which significantly limits physical or mental
23 ability to do basic work-related activities. 20 C.F.R. § 416.920(c). It must result
24 from anatomical, physiological, or psychological abnormalities which can be shown
25 by medically acceptable clinical and laboratory diagnostic techniques. It must be
26 established by medical evidence consisting of signs, symptoms, and laboratory
27 findings, not just the claimant's statement of symptoms. 20 C.F.R. § 416.908.

28 **ORDER GRANTING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT- 5**

1 Step two is a *de minimis* inquiry designed to weed out nonmeritorious claims
2 at an early stage in the sequential evaluation process. *Smolen v. Chater*, 80 F.3d
3 1273, 1290 (9th Cir. 1996), citing *Bowen v. Yuckert*, 482 U.S. 137, 153-54 (1987)
4 ("[S]tep two inquiry is a *de minimis* screening device to dispose of groundless
5 claims"). "[O]nly those claimants with slight abnormalities that do not significantly
6 limit any basic work activity can be denied benefits" at step two. *Bowen*, 482 U.S.
7 at 158 (concurring opinion). "Basic work activities" are the abilities and aptitudes to
8 do most jobs, including: 1) physical functions such as walking, standing, sitting,
9 lifting, pushing, pulling, reaching, carrying, or handling; 2) capacities for seeing,
10 hearing, and speaking; 3) understanding, carrying out, and remembering simple
11 instructions; 4) use of judgment; 5) responding appropriately to supervision, co-
12 workers and usual work situations; and 6) dealing with changes in a routine work
13 setting. 20 C.F.R. § 416.921(b).

14 The Commissioner has stated that "[i]f an adjudicator is unable to determine
15 clearly the effect of an impairment or combination of impairments on the individual's
16 ability to do basic work activities, the sequential evaluation should not end with the
17 not severe evaluation step." *Webb v. Barnhart*, 433 F.3d 683, 687 (9th Cir. 2005),
18 citing S.S.R. No. 85-28 (1985). An ALJ may find that a claimant lacks a medically
19 severe impairment or combination of impairments only when his conclusion is
20 "clearly established by medical evidence." *Id.*

21 Plaintiff asserts that had his symptom claims been properly credited, the ALJ
22 would have found that Plaintiff suffered from depression constituting a "severe"
23 impairment. As noted above, a "severe" impairment must be established by medical
24 evidence consisting of signs, symptoms, and laboratory findings, not just the
25 claimant's statement of symptoms. 20 C.F.R. § 416.908. In any event, the ALJ did
26 find that Plaintiff suffered from "severe mental impairments," (AR at p. 21),
27 specifically a "severe" cognitive disorder (AR at p. 14), but the ALJ concluded
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**ORDER GRANTING DEFENDANT'S
MOTION FOR SUMMARY JUDGMENT- 6**

1 Plaintiff's condition did "not rise to the level of complete disability." Substantial
2 evidence in the record supports that conclusion. A report from Community Health
3 Association of Spokane (CHAS) dated January 30, 2012, indicated "[n]o unusual
4 anxiety or evidence of depression." (AR at p. 718). This was repeated in a report
5 dated June 26, 2012 (AR at p. 721).

6 Plaintiff underwent a memory assessment by Jonathan W. Anderson, Ph.D., on
7 August 31, 2012. During that assessment, Plaintiff indicated he had last received
8 mental health counseling approximately 15 years ago. (AR at p. 729). Plaintiff
9 described his mood as pretty good and his affect was congruent to that stated mood.
10 (AR at p. 732). Dr. Anderson diagnosed the Plaintiff with Cognitive Disorder NOS
11 (Not Otherwise Specified). (AR at p. 733). Plaintiff demonstrated difficulties on
12 some cognitive tasks which were "more likely than not related to his recent medical
13 events," those being his cardiac arrest in May 2012 and anoxic encephalopathy¹
14 resulting from that event. (AR at p. 733). According to Dr. Anderson:

15 [Plaintiff] demonstrated concrete-level thinking as evidenced
16 by his interpretation of at least one proverb. He provided
17 concrete-level responses to 2 or 3 questions on a similarities
18 task. He appeared to have insight into his condition. His
19 memory is adequate for simple instructions. He sustained
20 attention during the present 120-minute evaluation. He
21 performed adequate on tasks of concentration. His pace
22 was adequate and he persisted on tasks. [Plaintiff] does
23 not appear to be resisting social interaction. It is likely
24 that [Plaintiff] would adapt appropriately to change.

25 Based on the present evaluation and a review of available
26 records, there does not appear to be a severe mental health
27 condition that would provide a barrier to [Plaintiff] sustaining
28 employment within his physical capabilities. He demonstrated
some memory difficulties. To compensate for this, he would
benefit from information presented in a list format and/or
he is allowed to read material. In addition, he would likely
benefit from a work environment that was not overly complex
or require him to multi-task.

¹ A condition where the brain tissue is deprived of oxygen.

1 When asked what would happen if he was offered a job that
2 started tomorrow, he replied, "It would have to depend on
3 what it was[,] but if it was something I could do[,] I would
4 probably take it." When asked to describe his perfect job,
5 he replied, "It would have to be something that there wasn't
6 many hours a week, part-time. And it would have to be
7 something where there wasn't too much heavy lifting."

8 (AR at pp. 733-34).

9 On August 22, October 1 and December 17, 2012, and on January 22, March
10 19, May 1, July 1 and August 7, 2013, reports from CHAS consistently indicated that
11 Plaintiff was experiencing no unusual anxiety or evidence of depression. (AR at pp.
12 743, 746, 751, 757, 769, 789 and 798). On September 12, 2013, Plaintiff presented
13 himself at CHAS for an individual therapy appointment related to his substance
14 abuse, specifically alcohol abuse. Notwithstanding an assessment of alcohol
15 dependence, the Plaintiff was assigned a current GAF of 65 indicating "mild"
16 symptoms (depressed mood and mild insomnia) or some difficulty in social,
17 occupational or school functioning, but generally functioning pretty well with some
18 meaningful interpersonal relationships.²

19 On October 2, 2013, Plaintiff reported having problems with anxiety. (AR at
20 p. 807). Plaintiff was advised to avoid emotional triggers of anxiety, use relaxation
21 techniques and was put on a trial course of Citalopram. (AR at p. 808). On October
22 3, 2013, Plaintiff presented for another individual therapy session regarding alcohol
23 abuse. Although Plaintiff was diagnosed with alcohol dependence and "major
24 depression, recurrent, moderate," he was nevertheless again assigned a current GAF
25 of 65. (AR at p. 811). The identical diagnoses were provided on November 5, 2013.
26 (AR at p. 814). On November 26, 2013, Plaintiff reported not having used alcohol in
27 three months, feeling good and doing very well. (AR at p. 821). On December 5,
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² *American Psychiatric Ass'n, Diagnostic & Statistical Manual of Mental Disorders*, (4th ed. Text Revision 2000)(DSM-IV-TR at p. 34).

1 2013, it was once again reported that Plaintiff had no unusual anxiety or evidence of
2 depression. (AR at p. 825).

3 On February 27, 2014, Plaintiff was psychologically evaluated by James E.
4 Bailey, Ph.D.. According to Dr. Bailey, the reason for the referral was as follows:

5 He complains of brain disease. He said he had very low blood
6 sugar. . . . He was not taking his medication for diabetes. He was
7 aware that proper glucose level would be needed for brain function.
8 . . . In terms of depression, he said his depression is not bad. He
9 said he has little energy, and his counselor told him that was
10 depression. He said his appetite is good and he sleeps six to
11 eight hours a night.

12 (AR at p. 857). Dr. Bailey noted that Plaintiff had no history of psychiatric
13 hospitalization and no history of psychological or psychiatric treatment. (AR at p.
14 857). On mental status exam, Dr. Bailey observed “no strong depressed facies”
15 regarding Plaintiff’s mood and affect. Asked why he could not work, the Plaintiff
16 indicated he had a speech impediment and tired easily, had low blood sugar and might
17 have to stop on the job, although he might be able to work part-time. (AR at p. 859).
18 Dr. Bailey diagnosed Plaintiff with alcohol dependence in remission for six months
19 and “[r]ule out cognitive disorder.” (AR at p. 859). According to the doctor, the
20 Plaintiff “may have been reduced from some prior level; however, he is generally
21 cognitively intact.” (AR at p. 859). In summary, Dr. Bailey stated:

22 [A]ctivities of daily living seem mostly independent within
23 his physical ability. Socially, he is cooperative and friendly.
24 He likely could meet the public. He is able to relate inter-
25 actively fairly well. In concentration and persistence, he can
26 do simpler and probably some well-learned multistep (sic)
27 tasks. He may have had some decrease in activity associated
28 with low blood sugar. However, he is fairly cognitively intact.
This would be consistent with the notes of the CHAS clinic.
In terms of decompensation, there is no evidence of decom-
penstation in the past 12 months.

(AR at p. 860).

There is not substantial evidence in the record that Plaintiff suffered from a
“severe” medically determinable impairment of depression for a period of 12 months.
Furthermore, the record does not indicate Plaintiff suffered unique functional

ORDER GRANTING DEFENDANT’S

MOTION FOR SUMMARY JUDGMENT- 9

1 limitations from depression as distinct from the limitations caused by the “severe”
2 mental impairments found by the ALJ. Accordingly, if the ALJ erred in failing to
3 find Plaintiff’s PTSD was a separate “severe” impairment, it was a harmless error.
4 *Burch v. Barnhart*, 400 F.3d 676, 682-83 (9th Cir. 2005).

6 **CREDIBILITY**

7 Where, as here, the Plaintiff has produced objective medical evidence of an
8 underlying impairment that could reasonably give rise to some degree of the
9 symptoms alleged, and there is no affirmative evidence of malingering, the ALJ’s
10 reasons for rejecting the Plaintiff’s testimony must be clear and convincing. *Garrison*
11 *v. Colvin*, 759 F.3d 95, 1014 (9th Cir. 2014); *Burrell v. Colvin*, 775 F.3d 1133, 1137
12 (9th Cir. 2014). "In assessing the claimant's credibility, the ALJ may use ordinary
13 techniques of credibility evaluation, such as considering the claimant's reputation for
14 truthfulness and any inconsistent statements in [his] testimony." *Tonapeytan v.*
15 *Halter*, 242 F.3d 1144, 1148 (9th Cir. 2001). See also *Thomas v. Barnhart*, 278 F.3d
16 947, 958 (9th Cir.2002)(following factors may be considered: 1) claimant's reputation
17 for truthfulness; 2) inconsistencies in the claimant's testimony or between his
18 testimony and his conduct; 3) claimant’s daily living activities; 4) claimant's work
19 record; and 5) testimony from physicians or third parties concerning the nature,
20 severity, and effect of claimant's condition).

21 At the hearing, Plaintiff testified the most he would be able to work would be
22 for two hours “mainly” because of his diabetes. (AR at p. 36). He testified he might
23 be able to go three or four hours if it involved sitting down, but he also indicated that
24 he gets low blood sugar crashes “sometimes unexpectedly” and when he does, he
25 needs to lie down and have sugar immediately. (AR at p. 37). According to Plaintiff,
26 he has never heard any of his doctors say he is not compliant with his diabetes
27 regimen (medication and diet). (AR at p. 40). Plaintiff testified that an adjustment
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ORDER GRANTING DEFENDANT’S MOTION FOR SUMMARY JUDGMENT- 10

1 in his medication about six months prior to the hearing date (April 2014) “fixed” his
2 low blood sugar problem. (AR at p. 41). Nevertheless, Plaintiff asserts he can still
3 have a low blood sugar crash due to diet and trying to consume enough sugar to avoid
4 a crash and not too much sugar in order to avoid gaining weight. (AR at pp. 44-45).

5 Plaintiff testified he is fatigued constantly and that almost every day he has to
6 lie down and take naps. (AR at p. 46). Plaintiff testified he takes one or two naps a
7 day lasting at least an hour when he feels like he needs to take a nap. (AR at pp. 55-
8 56). According to Plaintiff, he has insomnia and it is also necessary for him to get
9 up early in the morning to take his medications. (AR at p. 47).

10 Plaintiff testified he cannot lift anything over 20 pounds (AR at p. 61); can
11 walk three to four blocks in the summer and maybe a couple of additional blocks in
12 the winter (AR at p. 61); and can stand for fifteen to twenty minutes at a time (AR
13 at p. 61). He testified climbing stairs is difficult because of pain (neuropathy) in his
14 feet due to diabetes. (AR at p. 62). Plaintiff indicated he could sit for 10 to 30
15 minutes depending on the type of chair and then he would need to get up and stretch
16 “just for different reasons.” (AR at pp. 66-67). He said he walks two or three times
17 a week about a block or block and a half each way. (AR at p. 68). He denied ever
18 telling any doctor that he exercised daily for a total of 10 to 15 hours a week and
19 belonged to a health club. (AR at p. 68). He said he went bowling once with the
20 residents of his assisted living residence but was sore and tired after that and did not
21 do it again. (AR at p. 69).

22 The ALJ found Plaintiff’s allegation of disability was “contradicted by the fact
23 he has only undergone conservative treatment with diabetic medication, but has often
24 been noncompliant in taking his prescribed medication.” (AR at p. 18). Substantial
25 evidence in the record supports that conclusion.

26 In January 2012, it was reported that Plaintiff’s diabetes was well-controlled.
27 (AR at p. 391). On an emergency room visit in March 2012, however, it was
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**ORDER GRANTING DEFENDANT’S
MOTION FOR SUMMARY JUDGMENT- 11**

1 indicated that Plaintiff had been out of Metformin³ for the last several months and
2 therefore, his diabetes was uncontrolled. (AR at pp. 597-98). Plaintiff was given a
3 prescription for Metformin. (AR at p. 598). On another emergency room visit in
4 April 2012, it was noted that Plaintiff's hyperglycemia was "likely secondary to
5 poorly controlled diabetes," the Plaintiff was unsure whether he had been taking his
6 Metformin, and the emergency room physician suspected this was "due to medication
7 noncompliance." (AR at p. 595). Upon his discharge from the hospital in May 2012
8 following his admission for myocardial infarction and resulting anoxic
9 encephalopathy, it was reported that Plaintiff's diabetes was being managed with oral
10 (p.o.) medications. (AR at p. 608). On June 26, 2012, it was reported that Plaintiff's
11 diabetes was well-controlled. (AR at p. 721). This was also the case on October 3,
12 2012 (AR at p. 749) and on December 7, 2012 (AR at p. 750), at which time Plaintiff
13 was advised he was not in need of diabetes specialist care as his diabetes was well-
14 controlled. (AR at p. 752). On January 22, 2013, Plaintiff's medications (Lantus⁴ and
15 Metformin) were renewed for his "Diabetes Type 2, controlled." (AR at p. 757).

16 On February 22, 2013, it was reported that Plaintiff went to an area hospital
17 with poorly controlled diabetes. (AR at p. 761). On February 25, 2013, a report
18 indicated that Plaintiff was "refusing the medication" and therefore, Plaintiff was
19 instructed/counseled to take insulin as prescribed, monitor his blood sugar at home
20 three to four times daily and increase the amount of Lantus and insulin he was taking.
21 (AR at pp. 763 and 765).

22 On March 19, 2013, Advanced Registered Nurse Practitioner Kathryn Sander
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24 ³ Oral diabetes medicine that helps control blood sugar levels in people with
25 Type 2 diabetes and is sometimes used in combination with insulin or other
26 medications.

27 ⁴ Generically known as insulin glargine.
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1 who saw Plaintiff at CHAS noted that Plaintiff was doing “quite well,” but that he
2 was having a lot of low blood glucose later in the day. (AR at p. 767). In the “Social
3 History” of her report, it indicated there was no history of alcohol use (AR at p. 768),
4 although that was clearly contrary to what was indicated when Plaintiff was seen in
5 the emergency room in the early part of 2012 (AR at pp. 594-98). It was also
6 indicated that Plaintiff had a moderate activity level, that he was a health club
7 member, and that he exercised daily for a total of 10-15 hours (AR at p. 768) which,
8 as noted above, he denied during the April 2014 hearing. It was further indicated that
9 Plaintiff’s hobbies included going to church and to the library. (AR at p. 768). The
10 ARNP’s assessment was that Plaintiff’s diabetes was uncontrolled at that time. (AR
11 at p. 769).

12 On a follow-up visit on March 27, 2013 to PA-C (Certified Physician’s
13 Assistant) Benjamin Moss at CHAS, the Plaintiff reported he was “doing well” on his
14 medications and “[h]is sugars [were] also improved with the recent changes in his
15 diabetes meds.” (AR at p. 771). Plaintiff was counseled to take his medications as
16 required. (AR at p. 772). In April 2013, Plaintiff was instructed to take his Lantus
17 at bedtime (AR at p. 789), a change which he testified helped to fix his low blood
18 sugar problem. In August 2013, Plaintiff reported that he was on a “drinking binge”
19 to which he attributed his low blood sugar readings. (AR at p. 796). A report dated
20 August 26, 2013 indicated Plaintiff was being seen after being admitted to the
21 hospital for alcohol withdrawal and advised he had not had any alcohol since August
22 13. (AR at p. 800). He was referred to outpatient alcohol counseling and instructed
23 to take his diabetes medication as prescribed, monitor his blood sugar one to three
24 times daily, make appropriate dietary changes to control sugars, and exercise at least
25 two to three times a week for 20 to 30 minutes. (AR at p. 803). On October 2, 2013,
26 it was reported that Plaintiff’s diabetes and sugars were under control. (AR at p.
27 807). On October 3, 2013, Plaintiff advised he was adhering to his medication
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**ORDER GRANTING DEFENDANT’S
MOTION FOR SUMMARY JUDGMENT- 13**

1 regime, getting daily exercise and sleeping well. (AR at p. 810). On November 18,
2 2013, Plaintiff presented for follow-up on diabetes and medications, denied any
3 current problems, reported feeling well and that he was taking his medications as
4 prescribed. (AR at p. 816). On November 26, 2013, Plaintiff was described as doing
5 well and reported he had not used alcohol in three months. He indicated he was
6 feeling good and not craving alcohol. He advised that the assisted living residence
7 he was in provided a diabetes healthy diet as many of the residents had diabetes. (AR
8 at p. 821). On December 5, 2013, Plaintiff indicated he had no recollection of any
9 “lows.” (AR at p. 823). The assessment at that time was diabetes with “neurological
10 manifestations.” (AR at p. 826). On February 13, 2014, Plaintiff reported that lately
11 his sugars had been very good, but he had been sick the last month and this drove his
12 sugars up. (AR at p. 831).

13 There are simply no opinions during the relevant period of time from any of the
14 medical providers suggesting that Plaintiff’s diabetes physically limited him to an
15 extent greater than that found by the ALJ in her RFC determination. As the ALJ
16 noted, on September 17, 2012, Norman Staley, M.D., reviewed the medical record to
17 date and concluded the Plaintiff was capable of: lifting twenty pounds occasionally
18 and ten pounds frequently; standing or walking for six hours and sitting for six hours
19 in an eight hour workday; limited postural activities except for frequent stooping,
20 crouching and crawling; frequent reaching overhead bilaterally; but preclusion of
21 concentrated exposure to hazards. (AR at p. 18).

22 Consistent therewith was the disability examination conducted by Thomas
23 Hull, M.D., Olympus Health Services, LLC, on September 24, 2012, which resulted
24 in the following assessment:

25 Gait and station were normal. He has normal speech, hearing
26 and vision. Motor exam normal. He has some mild decrease
27 in range of motion in the shoulders. He [complains of]
28 vertigo and tinnitus since his [myocardial infarction]. He can
 hold and manipulate small objects.

**ORDER GRANTING DEFENDANT’S
MOTION FOR SUMMARY JUDGMENT- 14**

1 (AR at p. 740).

2 In his February 27, 2014 report, Dr. Bailey noted as follows:

3 [Plaintiff] has no driver's license but can drive. He is
4 able to do cooking, cleaning and shopping, but where
5 he lives, they do that. He has friends in his girlfriend.
6 He is not assigned any chores where he is. On a typical
day, he might sort files or boxes for two hours with
his girlfriend. He watches two or three hours of TV.
He goes on errands or shopping up to six hours.

7 (AR at p. 859). Based on this, as well as other evidence in the record regarding
8 Plaintiff's daily living activities, the ALJ rationally concluded that Plaintiff's
9 "physical impairments have reduced his capacity to work, but not to the extent that
10 he is precluded entirely from basic work-related activity." (AR at p. 19).

11 Likewise, substantial evidence in the record supports the ALJ's RFC
12 determination with regard to the extent of the Plaintiff's mental limitations set forth
13 in that determination. This includes the evidence discussed above regarding the
14 severity of Plaintiff's mental impairments, as well as Plaintiff's hearing testimony in
15 which he indicated Citalopram prescribed for his depression had definitely resulted
16 in improvement and therefore, he felt it was no longer necessary to continue attending
17 counseling sessions for depression. (AR at pp. 70-72).

18 19 CONCLUSION

20 ALJ Freund rationally interpreted the evidence and "substantial evidence"-
21 more than a scintilla, less than a preponderance- supports her decision that Plaintiff
22 is not disabled.

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28 **ORDER GRANTING DEFENDANT'S
MOTION FOR SUMMARY JUDGMENT- 15**

1 Defendant's Motion For Summary Judgment (ECF No. 14) is **GRANTED** and
2 Plaintiff's Motion For Summary Judgment (ECF No. 13) is **DENIED**. The
3 Commissioner's decision is **AFFIRMED**.

4 **IT IS SO ORDERED.** The District Executive shall enter judgment
5 accordingly and forward copies of the judgment and this order to counsel of record.

6 **DATED** this 24th day of April, 2017.

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8 *s/Lonny R. Suko*

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LONNY R. SUKO
10 Senior United States District Judge
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**ORDER GRANTING DEFENDANT'S
MOTION FOR SUMMARY JUDGMENT- 16**